

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

**STATE OF TEXAS; AMERICAN
ASSOCIATION OF PRO-LIFE
OBSTETRICIANS &
GYNECOLOGISTS; and
CHRISTIAN MEDICAL &
DENTAL ASSOCIATIONS,**

Plaintiffs,

V.

XAVIER BECERRA, in his official capacity as Secretary of Health and Human Services; **UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; CENTERS FOR MEDICARE & MEDICAID SERVICES (CMS); KAREN L. TRITZ**, in her official capacity as Director of the Survey and Operations Group for CMS; **DAVID R. WRIGHT**, in his official capacity as Director of the Quality Safety and Oversight Group for CMS,

Defendants.

CIVIL ACTION No. 5:22-CV-00185

JOINT STATUS REPORT

In accordance with this Court's Order [Dkt. #84], the Parties submit this Joint Status Report regarding a proposed scheduling order.

Plaintiffs' view:

The parties have conferred on various matters since the Court's order, including Defendants' motion to extend the answer deadline, motion for clarification,

and options for scheduling the case. Plaintiffs' view is that the motion for clarification should not delay the schedule in this case for the reasons the Court already articulated and that Plaintiffs will discuss in their response brief. Plaintiffs further propose that the preliminary injunction be converted to final judgment while reserving Defendants' right to appeal.

If Defendants object to that approach, Plaintiffs propose that the Court proceed to judgment on the merits on a schedule that would involve Defendants filing the administrative record by the end of September, the parties stipulating to facts by mid-October, the parties filing motions for summary judgment in early November, and the parties completing briefing for those motions by mid-December, with oral argument scheduled in January. If parties wish to submit additional evidence outside of a stipulation, the Court could hold a bench trial at that time to take evidence and hear argument.

Because Defendants asked Plaintiffs for more time to meet and confer over the possible schedule, Plaintiffs do not oppose Defendants' suggestion that the Court set a deadline for the parties to submit another joint status report on September 16, 2022.

Defendants' view:

Defendants intend to file a notice of appeal in this matter, and believe that the Court's ruling on their motion for clarification would inform the scope of further proceedings, whether in this Court or on appeal. Accordingly, Defendants respectfully submit that it would be most sensible to defer consideration of scheduling matters until the Court resolves the clarification motion, and suggest that the parties meet

and confer promptly thereafter and file a status report setting forth their proposals for any further proceedings within 10 days of the Court's ruling. Plaintiffs would not be prejudiced by this short pause to ensure that further proceedings unfold in an orderly fashion.

Defendants' counsel did not receive Plaintiffs' scheduling proposal—including the proposal to convert the Court's preliminary injunction to final judgment—until the afternoon of Thursday, September 8, 2022, and thus have not had a sufficient opportunity to weigh that proposal or formulate a final position on it. But Defendants are actively considering Plaintiffs' proposal to convert the preliminary injunction to a final judgment, and anticipate being able to take a position on it promptly after Defendants' clarification motion is resolved and the scope of the Court's preliminary injunction is more clearly understood.

In the event the Court nevertheless determines to schedule further proceedings at this time, Defendants agree that the next steps would be the submission of the administrative record and summary judgment briefing. In a typical challenge to agency action, “the entire case on review is a question of law, and only a question of law,” *Marshall Cty. Health Care Auth. v. Shalala*, 988 F.2d 1221, 1226 (D.C. Cir. 1993), so Defendants believe that the questions whether a joint stipulation of facts or a bench trial would be appropriate would benefit from further discussion among the parties. Defendants also believe that cross-motions for summary judgment, with Plaintiffs filing first, would be the most efficient course for further briefing—but, again, believe that such issues, including any particular filing dates,

would benefit from further discussion among the parties. In the meantime, Defendants would reserve the right to make evidentiary objections to Plaintiffs' submissions.

For these reasons, Defendants respectfully submit that the Court should defer consideration of scheduling matters until their clarification motion is resolved, and direct the parties to submit a joint status report with their scheduling proposals 10 days thereafter. At a minimum, however, the Court should permit the parties to confer for an additional week to attempt to reach agreement on—or at least narrow any areas of dispute about—these matters, and to file a further joint status report with their proposals on September 16, 2022.

Respectfully submitted.

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